

RICARDO LOPEZ

(Name)

California Men's Colony (Cell 6231)

P.O. Box 8101

(Address)

San Luis Obispo, California 93409-8101

(City, State, Zip)

V-49533

(CDC Inmate No.)

FILED

MAR - 7 2008

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

ORIGINAL

2254	1983	<input checked="" type="checkbox"/>
FILING FEE PAID		
Yes	No	<input checked="" type="checkbox"/>
IFP MOTION FILED		
Yes	No	<input checked="" type="checkbox"/>
COPIES SENT TO		
Court	Pro Se	<input checked="" type="checkbox"/>

United States District Court
Southern District of California

(Enter full name of plaintiff in this action.)

RICARDO LOPEZ

Plaintiff,

v.

C. COOK

R.H. MEISEL, O.D.

N. BARRERAS, M.D., C.M.O.,

MAJID MANI, M.D.

(Enter full name of each defendant in this action.)

Defendant(s).

'08 CV 0438 H LSP

Civil Case No. _____

(To be supplied by Court Clerk)

Complaint Under the
Civil Rights Act
42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

N/A

B. Parties

- Plaintiff: This complaint alleges that the civil rights of Plaintiff, Ricardo Lopez
(print Plaintiff's name)
, who presently resides at California men's Colony
(mailing address or place of confinement)
P.O. Box 8101 in San Luis Obispo, California, were violated by the actions
of the below named individuals. The actions were directed against Plaintiff at Centinela
State Prison, Imperial, CA. on (dates) Jan. 05, _____, and _____
(institution/place where violation occurred) (Count 1) (Count 2) (Count 3)
- Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

ck

Defendant C. COOK resides in Imperial
(name) (County of residence)
 and is employed as a Medical Appeals Analyst . This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: Defendant was acting under the authority of the
 State of California, Department of Corrections.

Defendant R.H. MEISEL resides in Imperial
(name) (County of residence)
 and is employed as a Clinic Optometrist . This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: Defendant was acting under the authority of the
 State of California, Department of Corrections.

Defendant N. BARRERAS resides in Imperial
(name) (County of residence)
 and is employed as a Chief Medical Officer . This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: Defendant was acting under the authority of the
 State of California, Department of Corrections.

Defendant MAJID MANI resides in Imperial/San Diego
(name) (County of residence)
 and is employed as a Ophthalmologist . This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: Defendant was under contract to the State of
 California, Department of Corrections performing surgeries.

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: **Right to Adequate Medical Care & Medical Negligence under the** (E.g., right to medical care, access to courts, Eighth Amendment.

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 1.]

In January of 2005, plaintiff submitted a medical request form regarding problems with his left eye as well as severe headaches. Because of an extraordinary delay in receiving medical attention, plaintiff submitted a CDC 602 Inmate grievance form complaining about the lack of medical attention that he was receiving. Plaintiff was subsequently seen by R.H.Meisel, Optometrist, who on July 12, 2005, issued the plaintiff a CDC Chrono permitting him to receive prescription glasses and plastic frames from outside to be sent by his family. Dr. Meisel also issued a chrono establishing the fact that the plaintiff should not be assigned to any eye hazardous jobs due to loss of vision in left eye. The plaintiff's left eye condition continued to worsen. His vision in his left eye deteriorated to a point in which he could no longer see out of it. Plaintiff continued to make numerous requests for additional medical attention for his left eye with no response. Plaintiff submitted several CDC 602's complaining about his left eye vision. C.Cook, Medical Appeals Analyst responded to the plaintiff's 602. On November 14, 2006, plaintiff submitted a CDC 602 requesting to be seen by an eye specialist because his vision was basically gone in his left eye. C.Cook denied the 602 based on the fact that the plaintiff had already been seen by an outside optometrist on 10-24-06. C.Cook stated that my health record had been reviewed and it was discovered that plaintiff had a detached retina of the left eye with scaring. C Cook further stated that there is currently

See Attached page(s) for continuation

no procedure available to correct this problem and that i need to concentrate on protecting my good right eye. Unfortunately, I was not satisfied with Cook's conclusion.

After verbally and documentarily complaining about the lack of medical attention,, through the approval of Chief Medical Officer N. Barreras, I was referred to Dr. Majid Mani, of the California Retina Associates. In a memorandum dated March 16, 2007, Dr. Mani informed the institution that as a result of the chronicity of the detachment, the plaintiff also has macular hole in the left eye as well. If we do not do the surgery, the left eye will shrink and will undergo phthisis bulbi and the plaintiff will lose the eye totally. The memorandum was addressed to Dr. Meisel.

The institution finally approved for the surgery to happen. Dr. Mani performed the surgery at Alvarado Medical Hospital. Unfortunately, even after the surgery, my vision in my left eye is still non existent. I cannot see out of my left eye. I have consistently filed documentation after the surgery in regards to the inept procedure that Dr. Mani performed. C. Cook is negligent because of the two year delay that it took for me to finally receive the medical attention, e.g., the surgery. Cook's actions was that of a departmental cost-saver instead of a medical professional. Dr. Meisel was negligent because throughout his consultation and examination he failed to discover the macular hole that was in my left eye. Had Dr. Meisel performed the appropriate procedure, the hole in my eye would have been discovered and the operation would/could have been conducted in a more ample time.

N. Barreras was negligent because as the Chief Medical Officer the approval for the surgery, and the delay of the surgery was contributed to the office of the Chief Medical Officer.

Majid Mani was negligent because the surgery that he performed did not remedy the problem. I still cannot see out of my left eye. As Dr. Mani stated in his memorandum to Dr. Meisel, if we do not do the surgery, the left eye will shrink and will undergo phthisis bulbi and he will lose the eye totally. Based on this conclusion, I did have the surgery and still lost the vision in my left eye totally. One must conclude that based on the memorandum, the surgery would prevent me from losing my vision totally, but instead, the surgery was medically insufficient.

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Count 2: The following civil right has been violated: N/A
(E.g., right to medical care, access to courts,

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 2.]

Count 3: The following civil right has been violated: N/A
(E.g., right to medical care, access to courts,

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Count 3.]

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? ☐ Yes ☒ No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

(b) Name of the court and docket number: _____

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] _____

(d) Issues raised:

(e) Approximate date case was filed: _____

(f) Approximate date of disposition: _____

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☐ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

I have filed numerous CDC 602's regarding this matter. In the initial grievance, I was eventually seen by Dr. Meisel, but after that consultation, my vision decreased and I subsequently submitted numerous other grievances with little or no actual results. All of the CDC 602's were copied and I have the copies in my possession.

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s):

2. Damages in the sum of \$ 150,000 per defendant for a total of \$600,000.
3. Punitive damages in the sum of \$
4. Other: That another surgery be performed on plaintiff's left eye so that his vision may be restored. Plaintiff request that independent Ophthalmologist do surgery.

F. Demand for Jury Trial

Plaintiff demands a trial by ☒ Jury ☐ Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

☐

Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☒

Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

I declare under the penalty of perjury that the foregoing is true and correct.

2-17-08

Date

Ricardo Lopez
Signature of Plaintiff

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, court rules, or by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Ricardo Lopez

2254	1983
FILING FEE PAID	
Yes	No
IFP MOTION FILED	
COPIES SENT TO	
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND	
Court	Case

C. Cook, CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *RM* DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Luis Obispo COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Luis Obispo (EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Ricardo Lopez
PO Box 8101
San Luis Obispo, CA 93409
V-49533

ATTORNEYS (IF KNOWN)

'08 CV 0438 H LSP

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only))

- | | | | |
|---|---|----------------------------|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | Incorporated or Principal Place of Business in This State | | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen of Another State | Incorporated and Principal Place of Business in Another State | | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | Foreign Nation | | |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. 1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC81 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act 29 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(c)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 3/7/2008

SIGNATURE OF ATTORNEY OF RECORD

*R. Miller**CR*